REMARKS

Reconsideration of this application is respectfully requested. Petition is hereby made for a one-month extension of time to respond to the outstanding Final Office Action of August 20, 2007. In addition, a Request for Continued Examination is being filed with this Amendment After Final Rejection.

Claims 1 – 51 are pending in the application. Upon entry of this Amendment, independent claims 1 and 23, and dependent claims 2-5 and 48-51 will be amended.

In the outstanding Final Office Action of August 20, 2007, the Examiner rejected claims 1-51 under 35 U.S.C. §103(a) as being unpatentable over WO-A-0000036 ("Jensen") in view of U.S. Patent No. 3,945,448 ("Sellers"), U.S. Patent No. 5,109,936 ("Ruppel") and U.S. Patent No. 5,750,938 ("DeCaris"). The Examiner's rejection is respectfully traversed.

In a memorandum to the Technology Center Directors, dated May 3, 2007 (Attachment A), the Deputy Commissioner for Patent Operations, in commenting on the impact on obviousness rejections under 35 U.S.C. §103(a) of the decision of the Supreme Court in the case of *KSR Int'l. Co. v. Teleflex, Inc.*, ___ U.S. ___, 127 S.Ct. 1727 (2007), recognized that, in formulating a rejection under §103(a), "it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed." Thus, to demonstrate that claims 1 – 51 of the present application are obvious over the cited references identified above, the Examiner must identify a reason as to why one of ordinary skill in the art would have combined these references to produce the claimed invention.

Here, even assuming, *arguendo*, that the Examiner properly combined the cited references, the result would still not be the claimed invention because the cited references do not

disclose at least two of the features of the claimed method and apparatus described in independent claims 1 and 23 of the present application.

Independent claims 1 and 23 have been amended to clarify that the claimed method and apparatus of the present application calculate at least a first correlation insignia by comparing the weight determined by weighing an item on the first scale and the weights of at least one of the receptacles receiving the item and using the first correlation insignia to evaluate if at least the first scale and/or the at least one receptacle's scale is out of order or needs readjustment, and if so, to correct the first scale and/or the at least one receptacle's scale. To support his §103(a) rejection of claims 1 – 51, the Examiner argues that:

> The general idea of using data from a check weigher to dynamically recalibrate an upstream weighing scale is know (sic) as shown by the examples of Ruppel and De Caris, and would have been an obvious modification to the method disclosed in D1 [Jensen] motivated by desire (sic) to increase system accuracy.

August 20, 2007 Final Office Action, p.4.

A review of the several Jensen, Sellers, De Caris and Ruppell references cited by the Examiner to support his §103(a) rejection, however, reveals that none of the cited references discloses the scale accuracy evaluation and correction feature now recited in amended independent claims 1 and 23 of the present application. As such, even when combined together, as argued by the Examiner, such references can not produce the claimed method or apparatus of the present invention.

Jensen discloses a portioning apparatus 2 with a supply conveyer 4, a dynamic weighing-in unit 8 and a lead-out conveyer 10, along which there are a number of receiving stations in the form of containers 12 which can be selectively provided with items 14 that pass the weighing-in unit 8. A control unit 16 can activate sweeper arms 18 opposite the individual containers 12 for

weight-controlled grouping of items in the containers, primarily for building up item portions of a fixed weight. When a build-up in an individual container is complete, the container can be emptied by the opening of a bottom flap.

Thus, Jensen discloses a single weighing-in unit 8. There is no discussion in Jensen of any attempt to ascertain whether the weighing-in unit 8 is accurate, much less any discussion of how the weighing-in unit 8 would be recalibrated if a determination could be made that the unit is inaccurate.

Sellers discloses a package weight control system that includes a feeder 11 for dispensing material. The material 12 is dispensed by feeder 11 at times and in amounts controlled by the system 10. A conveyer belt 15 is disposed below the feeder 11 for receiving the material 12 to be conveyed. A hopper 25 is positioned at the other end of the conveyer belt 15 for receipt of the material 12 to be packaged. A weighing means 27 supports the hopper 25 and continuously weighs the material in the hopper and generates a digital signal representative of the weight being sensed. A pair of weighing means 31 and 32 are also attached to the drive and idle wheels 17 and 19, respectively, of the conveyer, and continuously sense the weight of belt 15, the wheels 17 and 19, and ancillary support structure, and the amounts 13 of material 12 on and traveling with the conveyer belt 15. Each weighing means 31 and 32 is capable of generating a summed signal that is proportional to the weight of one or more unit amounts 13, only, because of the cancellation out of the weight of the conveyer belt and drive structure.

Thus, Sellers discloses three weighing means 27, 31 and 32, but, here again, there is no discussion in Sellers of any attempt to ascertain whether the weighing means 27, 31 and/or 32 are accurate, much less any discussion of how such weighing means would be recalibrated if a determination could be made that any of such weighing means is inaccurate.

De Caris discloses a method and apparatus for weighing drugs and for metering drugs into capsules. The machine 1 includes a unit 19 with a weighing station 23 with a precision scale 24 connected electrically to a control system and a transfer device 25 that is controlled by system 21 and that feeds a number of empty capsules 2a to an from weighing station 23. The machine 1 also includes a capacitive sensor 36 located at a drum 14 and along a path 37 of capsules 2, and which, for each empty capsule 2a, successively supplies control system 21 with a first signal correlated to the weight of empty capsule 2a, and a second zero (no-load) signal indicating the absence of capsules 2 inside seats 16 of drum 14. As each empty capsule 2a travels through a channel 44, it causes a variation in the capacitance of sensor 36 that is then used to determine the weight of the empty capsule 2a according to an equation disclosed in De Caris. Machine 1 also includes a unit 20 comprised of a weighing station 49 with a precision scale for weighing full capsules 2b. Scale 50 is connected to control system 21 and is supplied with capsules 2b by a pickup and feed device 51 for successively removing full capsules 2b from drum 46 and feeding them to scale 50. Weighing unit 20 also comprises a capacitive sensor 59 similar to and operating in the same manner as sensor 36. Capacitive sensor 59 is also connected to control system 21 and provides for detecting the weight of full capsules 2b according to variations in its capacitance affected not only by the dielectric capsule but also by that of the drug. The variation in the capacitor is again used to measure the weight of the full capsules 2b according to another equation disclosed in De Caris.

Thus, De Caris discloses four weighing devices, scales 24 and 50 and capacitive sensors 36 and 59, but, again, there is no discussion in De Caris of any attempt to ascertain whether the precision scales 24 and/or 50 or the capacitive sensors 36 and/or 59 are accurate, much less any

discussion of how such scales and/or sensors would be recalibrated if a determination could be made that any of such scales and/or sensors are inaccurate.

Ruppell discloses a dynamic weight control system for a slicing machine. Figure 1 of Ruppel shows a slicing machine 12 to which Ruppel's dynamic weight control system 101 may be applied. The slicing machine 12 comprises a supporting table 14 having a platen or feed bed 16 over which a food product 18 is fed by a conveyor or other feed mechanism 20. The food product 18 is sliced by a rotating blade 22 and discharged to a measuring and segregating apparatus 32. The measuring and segregating apparatus 32 receives slices from machine 12. Apparatus 32 may also segregate the food product slices into groups or drafts by momentarily interrupting the feeding of a conveyor 44. The measuring and segregating apparatus 32, which constitutes a food product weighing station, is aligned with a check weighing station 36 and a rejection/acceptance station 38. These stations are linked by successive conveyors 44, 46, 56 and 58, the latter leading into the accept/reject apparatus or station 38. The input end of conveyor 44 is located adjacent to the discharge end of the slicing machine 12 in position to receive individual slices cut by blade 22. When a predetermined weight of slices has been accumulated on conveyor 44 they are transferred to conveyor 46 and then to the conveyor 56 in the check weighing station 36. The weighing conveyor 44 is supported by a scale 50. At the check weighing station 36, a conveyor 56 receives the grouped, shingled slices traveling into the station on conveyor 46. A suitable sensing means such as a photoelectric detector 54 is located at the station 36, as is a secondary scale 50A which registers the weight of each group or draft of slices traversing conveyor 56. If the scale 50A detects a draft which is above or below a preset acceptable range for draft weights, a reject signal generated by the scale is transmitted to the accept/reject station 38. That particular out-of-tolerance draft is then diverted to a reject

position, as it leaves station 38, for adjustment of weight. There may be two reject locations, one for underweight drafts and the other for overweight drafts.

Thus, Ruppell discloses two scales 50 and 50A, but here again, there is no discussion in Ruppell of any attempt to ascertain whether the scales 50 and/or 50A are accurate, much less any discussion of how such scales would be recalibrated if a determination could be made that such scales are inaccurate.

In sum, independent claims 1 and 23 of the present application are not obvious over the cited references, either alone or in combination with one another. And because independent claims 1 and 23 are not obvious over the cited references, dependent claims 2 – 22 and 24 – 51, which depend either directly or indirectly from claims 1 and 23 are also not obvious over the cited references.

In view of the foregoing, it is believed that all of the claims pending in the application, *i.e.*, claims 1 – 51, are now in condition for allowance, which action is earnestly solicited. If any issues remain in this application, the Examiner is urged to contact the undersigned a the telephone number listed below.

Respectfully submitted,

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